(14)

No. 99-1030

Supreme Court, U.S.
FILED
MAY 15 2000
CLERK

IN THE

Supreme Court of the United States

CITY OF INDIANAPOLIS, INDIANA, AND BART PETERSON, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF INDIANAPOLIS, INDIANA,
Petitioners,

v.

JAMES EDMOND AND JOELL PALMER, ON THEIR OWN BEHALF AND ON BEHALF OF A CLASS OF THOSE SIMILARLY SITUATED,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED 12/15/99
CERTIORARI GRANTED 2/22/00

22pp

TABLE OF CONTENTS

	Page
District Court docket entries	1
Court of Appeals docket entries	3
Class Action Complaint for Declaratory and Injunctive Relief/Individual Complaint for Damages for Named Plaintiffs	6
Affidavit of James Edmond (attached to Plaintiff's Reply Memorandum in Support of Motion for Preliminary Injunction)	16
Affidavit of Joell Palmer (attached to Plaintiff's Reply Memorandum in Support of Motion for Preliminary Injunction)	19

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

No. IP98-C-1400-B/S

JAMES EDMOND AND JOELL PALMER,
on their own behalf and on behalf of a class of
those similarly situated,

Plaintiffs,

v.

STEPHEN GOLDSMITH, in his official capacity as Mayor of the City of Indianapolis, Indiana, INDIANAPOLIS, INDIANA, and UNKNOWN MEMBERS OF THE INDIANAPOLIS POLICE DEPARTMENT,

Defendants.

DOCKET ENTRIES

DATED	PROCEEDINGS
10/14/98	COMPLAINT (Class Action) for Declaratory and Injunctive Relief * * *
	* * *
10/20/98	MOTION FOR PRELIM INJ (Verified) * * *
10/20/98	MEMORANDUM in support of Motion for Preliminary Injunction * * *
11/04/98	RESPONSE to pltf's Memorandum in support of Motion for Preliminary Injunction * * *
11/04/98	AFFIDAVIT of Marshall Depew * * *
	* * *
11/09/98	STIPULATION of the Parties regarding factual issues - JOINT Parties * * *

DATE	PROCEEDINGS
11/09/98	STIPULATION to Certify Cause as a Class Action - JOINT Parties * * *
11/09/98	REPLY MEMORANDUM in support of Motion for Preliminary Injunction * * *
11/18/98	ENTRY GRANTS Pltfs' Motion for Class Certification * * *
11/18/98	ENTRY DENIES Pltfs' Motion for Preliminary Injunction * * *
11/18/98	ENTRY DENIES Pltfs' claim under the Indiana Constitution based on their failure to establish a likelihood of success on its merits * * *
	* * *
12/03/98	NOTICE OF APPEAL from Entry of 11/18/98, denying PLTF's motion for Preliminary Injunction * * *
	* * *
12/09/98	MOTION TO STAY proceedings pending Appeal and to suspend Case Management Deadlines - JOINT Parties * * *
	* * *
12/10/98	ORDER GRANTS parties Joint Motion to suspend the Case management Deadlines and to Stay Proceedings Pending Appeal * * *
	* * *
08/30/99	MANDATE RECEIVED FROM CA. The judgment of the District Court is REVERSED, with costs, in accordance with the decision of the CA entered 7/07/99. Received certified copy of opinion and judgment. Record returned consisting of 1 vol pleadings. * * *
	* * *

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-4124

JAMES EDMOND AND JOELL PALMER,
on their own behalf and on behalf of a class of
those similarly situated,
Plaintiffs-Appellants,

v.

STEPHEN GOLDSMITH, in his official capacity as Mayor of the City of Indianapolis, Indiana, INDIANAPOLIS, INDIANA, and UNKNOWN MEMBERS OF THE INDIANAPOLIS POLICE DEPARTMENT,
Defendants-Appellees.

DOCKET ENTRIES

DATE	PROCEEDINGS
12/8/98	Private civil case docketed. Transcript information sheet due 12/18/98. Appellant's brief due 1/19/99 for James Edmond, for Joell Palmer. * * *
12/8/98	Filed Appellant James Edmond, Appellant Joell Palmer docketing statement.* * *
	* * *
3/19/99	Original record on appeal filed. Contents of record: 1 vol. pleadings. * * *
4/12/99	Case heard and taken under advisement by panel: Chief Judge Richard A. Posner, Circuit Judge Frank H. Easterbrook, Circuit Judge Diane P. Wood. * * *
	* * *

DATE	PROCEEDINGS
7/7/99	Filed opinion of the court by Chief Judge Posner. REVERSED. Chief Judge Richard A. Posner, Circuit Judge Frank H. Easterbrook, dissenting, Circuit Judge Diane P. Wood. * * *
7/7/99	ORDER: Final judgment filed per opinion. With costs: y. * * *
7/21/99	Filed 30c Petition for Rehearing with Suggestion for Rehearing Enbanc by Appellees Stephen Goldsmith, Indianapolis, IN and Unknown Members Indi. Dist. * * *
	* * *
8/18/99	ORDER: On July 21, 1999, defendants-appellees filed a petition for rehearing with suggestion for rehearing en banc and on August 3, 1999, plaintiffs-appellants filed an answer. All the judges on the original panel have voted to deny (*) the petition, and none of the active judges has requested a vote on the suggestion for rehearing en banc. The petition is therefore DENIED. (*)Statement of Easterbrook, Circuit Judge, respecting the denial of rehearing en banc. The question presented by this case is an important and recurring one, but I have not called for a vote on the petition for rehearing en banc. The court's opinion shows that a conflict among the circuits (and state courts) preexisted the panel's opinion, and it would be pointless to sit en banc just to consider moving from one side of that conflict to another. Only a higher court can give a definitive answer. * * *
	* * *

DATE	PROCEEDINGS
11/4/99	Notice from the Supreme Court that a motion for extension of time to file a Petition for Writ of Certiorari has been GRANTED, extending such time to 12/16/99. * * *
12/22/99	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. Supreme Court Case No.: 99-1030. * * *
2/25/00	Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari. Supreme Court Case No.: 99-1030. * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP98-C-1400-B/S

JAMES EDMOND and JOELL PALMER,
on their own behalf and on behalf of a class of
those similarly situated,
Plaintiffs,

v.

STEPHEN GOLDSMITH, in his official capacity
as Mayor of the City of Indianapolis, Indiana,
INDIANAPOLIS, INDIANA, and UNKNOWN
MEMBERS OF THE INDIANAPOLIS POLICE DEPARTMENT,
Defendants

COMPLAINT—CLASS ACTION
JURY TRIAL REQUESTED

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF/INDIVIDUAL COMPLAINT FOR DAMAGES FOR NAMED PLAINTIFFS

Introduction

1. This is a class action complaint for injunctive and declaratory relief challenging the defendants' continuing practice of using vehicle roadblocks in order to intercept unlawful drugs. The practice violates both the Indiana and the United States Constitutions. The two named plaintiffs

also request individual damages for the unlawful searches to which they were subjected.

Jurisdiction and Venue

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331 since it arises under the Constitution of the United States. This Court has jurisdiction of plaintiffs claims arising under Indiana law pursuant to 28 U.S.C. § 1367 since the state law claims are so related to the federal law claims that the form part of the same case or controversy under Article III of the United States Constitution.

3. This Court has jurisdiction to enter declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

Parties

6. James Edmond and Joell Palmer are both adult residents of Marion County, Indiana.

7. Stephen Goldsmith is the duly elected Mayor of the City of Indianapolis, Indiana.

8. The City of Indianapolis, Indiana is a municipal corporation and is Indiana's largest city and is its capital.

9. Unknown Members of the Indianapolis Police Department are the as of yet unknown police employees who were personally involved in the violation of the named plaintiffs rights.

Class Action Allegations

10. Plaintiffs seek to bring this action on their own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

11. The class is defined as:

> all persons traveling in automobiles through the areas of Indianapolis which are within the jurisdiction of the Indianapolis Police Department and who are therefore subject to the announced policy of the City of Indianapolis of operating random vehicle roadblocks in an attempt to interdict and curtail unlawful drugs and unlawful drug use.

12. The class meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure.

a. Although the exact size of the class is unknown, more than 1,000 persons have been stopped in the roadblocks already and the City of Indianapolis has announced that it intends to continue the roadblocks for the foreseeable future. The class is therefore so numerous that joinder of all members is impracticable and the numerosity requirement of Rule 23(a)(1) is met.

b. There are common questions of law or fact as required by Rule 23(a)(2), namely whether the defendants' traffic roadblock practice and policy is constitutional.

c. The claims of the representative parties are typical of those of the class as required by Rule 23(a)(3).

d. The representative parties are adequate class representatives as required by Rule 23(a)(4).

13. The further requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met here in that at all times the

defendants have acted and have failed to act in ways generally applicable to the class as a whole, thereby making appropriate both final injunctive and declaratory relief.

Factual Allegations

14. In order to combat what it perceives as a problem with trafficking and possession of unlawful drugs defendant Goldsmith and the City of Indianapolis have embarked on a program of traffic vehicle roadblocks where vehicles traveling on interstate exits in areas of Indianapolis are stopped.

15. The roadblocks are not publicized. Instead signs are erected on Indianapolis interstates specifying that there will be a traffic roadblock a short distance ahead.

16. However, there are not roadblocks placed on the interstate. Instead, roadblocks are placed at the base of the interstate exit which follows the signs announcing the roadblock. Defendants have specified that this is designed to "catch" motorists who leave the highway to avoid what they believe is an impending stop.

17. The roadblocks are generally nor visible from the highway.

18. Upon exiting some, but not all, vehicles are forced to pass through roadblocks.

19. Vehicles selected to pass through the roadblocks may not avoid the roadblock and are not free to leave until the process is concluded.

20. In the past, there have often been more than 30 police cars at the roadblocks along with operations vehicles, tow trucks and paddy wagons.

21. The roadblocks have caused long delays in traffic and some persons who have participated in the check points have

had to wait at least 15-20 minutes before they were allowed to resume their travel.

22. The vast majority of the individuals who are stopped by the roadblocks have not committed and are not committing any offenses and they are eventually allowed to leave the roadblock since it uncovers no reasonable suspicion of criminal activity. However, not all of these individuals stopped in the roadblocks are treated in the same manner. Among the many individuals who are detained at the roadblocks and for whom no criminal behavior is uncovered some are asked by members of the Indianapolis Police Department to show them their licenses and registration. These are taken away and checked and while they are being checked one of a number of drug detection dogs may sniff the outside of the individuals' car. Some individuals who are stopped have one of the dogs sniff their car even though officers do not check their license and registration. Some individuals are immediately asked to leave their cars even though there exists no reasonable suspicion or other cause to believe that any unlawful activity has or is taking place. Once the individuals leave their cars either officers or one of the dogs, or both, search their cars even though there is absolutely no reasonable suspicion to conduct such a search. Other individuals have their persons searched even though there is no reasonable suspicion to conduct such a search. When these searches fail to turn up any evidence of criminal behavior these persons are allowed to leave. Other individuals are interrogated as to the reason for their being in the location of the roadblock.

23. Defendant Goldsmith and the City of Indianapolis have indicated that it is their intention to continue these traffic roadblocks and stops for the foreseeable future.

24. On, or about, September 29, 1998, plaintiff James Edmond exited the ramp off of Interstate 65 in Indianapolis

onto Morris and Prospect streets when he saw flashing lights and approximately 30 police cars pulling over cars. He had not seen any signs concerning the roadblock before he exited.

25. An individual in street clothes with a badge around his neck, believed to be an Unknown Indianapolis Police Department Officer, motioned and told him to stop on the exit ramp.

26. The officer immediately began to ask Mr. Edmond questions such as: why did he exit at that particular exit and where he was coming from.

27. The officer also indicated that this was a canine search and asked for Mr. Edmond's license and registration. These were taken away. He also asked if Mr. Edmond had a gun which Mr. Edmond did since he is licensed to carry a concealed weapon and that license was in his wallet.

28. The officer took the gun from Mr. Edmond and told him to get out of his car. Mr. Edmond left the car.

29. Other Unknown Indianapolis Police Officers opened the passenger rear and front doors and a dog, directed by one of the Unknown Police Officers, entered his car.

30. After the dog spent some time in his car the unknown Indianapolis Police Officer controlling the dog said "Nothing", and took the dog away.

31. Nevertheless, Mr. Edmond was not allowed to enter his car and leave. Instead, another Unknown Indianapolis Police Department officer entered his car and opened and search a zipped up CD case which was on the floor board of his rear seats. He also opened up a box of cassette cases which was located in the rear of his car as well. Upon finding nothing the officer proceeded to look under the seats of his car. He found a flashlight that Mr. Edmond owns, unscrewed it and dumped out the batteries. Another Unknown Indianapolis

Police Department officer returned and handed Mr. Edmond back his license and registration and told him that he was clean and could be let go.

32. An Unknown Indianapolis Police Department officer then returned Mr. Edmond his gun to him. He did, however, retain, the bullet that was in the gun when it was seized.

33. At no time had Mr. Edmond committed any criminal activity. Nor was their at any time any reasonable suspicion, much less probable cause, for the inside of his car to be searched.

34. Mr. Edmond's detention at the roadblock took approximately 15-20 minutes.

35. On approximately September 28 or 29, 1998, Joell Palmer was traveling on Interstate 65 in Indianapolis and exited on the ramp leading to Prospect and East streets.

36. There were approximately 35 Indianapolis Police Department Officers on the ramp and he was pulled over.

37. An Unknown Indianapolis Police Department officer approached his car ans said that the police were going to search his car. He was told to leave his car.

38. Although an Unknown Indianapolis Police Department Officer took Mr. Palmer's registration and license, the police informed him his car was going to be searched even before his license and registration was taken.

39. Mr. Palmer informed the Unknown Members of the Indianapolis Police Department that he was not waiving his 4th Amendment rights.

40. An Unknown Member of the Indianapolis Police Department started to pat Mr. Palmer down and put his hand in his left front pocket of his pants. There was nothing there but keys and the officer did not remove anything from Mr. Palmer's person. Mr. Palmer again stated that he had not

waived his rights and the police officer informed him that he had no rights.

41. At that point the police officers brought a dog to his car and let the dog put its front paws in the back of the car and its head in the front of the car, even though at no point while the dog was outside of the car did the dog give any indication that drugs had been detected.

42. An Unknown Member of the Indianapolis Police Department then reached into Mr. Palmer's car and removed campaign literature which he had on his back seat. The officer went through the literature.

43. Mr. Palmer then had his license and registration returned to him by an officer and he was allowed to leave.

44. Mr. Palmer was detained for 5 to 10 minutes.

45. At no time had Mr. Palmer committed any criminal activity. Nor was their at any time any reasonable suspicion, much less probable cause, for the inside of his car to be searched or for the police to perform a pat down search of his person.

46. Both Mr. Edmond and Mr. Palmer regularly travel the interstate and other streets through Indianapolis and are therefore both subject to further stops by the defendants at the roadblocks. They are both extremely concerned about the potential for future stops inasmuch as they both strongly believe that the roadblocks violate their constitutional rights.

47. At all times defendants actions were taken under color of state law.

48. The actions of the defendants are causing plaintiffs and the putative class irreparable harm for which there is no adequate remedy at law.

Jury trial demand

49. Plaintiffs request a trial by jury for all claims so triable.

Legal claims

50. The random vehicle roadblocks that plaintiffs and the class have been, are being, and will be, subjected to represent unreasonable searches and seizures in violation of the Fourth Amendment to the United States Constitution as made applicable to defendants by the Fourteenth Amendment to the United States Constitution.

51. The random vehicle roadblocks that plaintiffs and the class have been, are being, and will be subjected to represent unreasonable searches and seizures in violation of Article 1 § 11 of the Indiana Constitution.

Request for relief

WHEREFORE, plaintiffs request that this Court:

1. Accept jurisdiction of this cause and set it for hearing at the earliest opportunity.

2. Certify this case as a class action with the class as certified as specified above.

3. Enter a declaratory judgment that defendants policy and practice of random vehicle roadblocks violates both the Fourth Amendment to the United States Constitution and Article 1 § 11 of the Indiana Constitution.

4. Enter a preliminary injunction, later to be made permanent, preventing defendants from continuing their practice and policy of conducting the random vehicle roadblocks.

5. Award the named plaintiffs their individual damages to compensate them for their unlawful searches and seizures.

6. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

7. Award plaintiffs all other proper relief.

/s/ illegible
Kenneth J. Falk
Indiana Civil Liberties Union
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059

Attorney for Plaintiffs

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

AFFIDAVIT OF JAMES EDMOND

Comes now James Edmond, being duly sworn upon his oath, and says that:

1. On, or about, September 29, 1998, I exited the ramp off of Interstate 65 in Indianapolis onto Morris and Prospect streets when I saw flashing lights and approximately 30 police cars. I saw police officers who were engaged in pulling over cars. Prior to exiting I had not seen any signs warning me about an impending roadblock.

2. An individual in street clothes with a badge around his neck, believed to be an Unknown Indianapolis Police Department Officer, motioned me and told me to stop on the exit ramp.

3. The officer immediately began to ask me questions such as: why did I exit at that particular exit and where was I coming from.

4. The officer also indicated that this was a canine search and asked for my license and registration. These were taken away. He also asked me if I had a gun which I did since I am licensed to carry a concealed weapon and that license was in my wallet.

5. The officer took the gun from me and told me to get out of my car. I left the car.

6. Other Unknown Indianapolis Police Officers opened the passenger rear and front doors and a dog, directed by one of the Unknown Police Officers, entered my car.

7. After the dog spent some time in my car the unknown Indianapolis Police Officer controlling the dog said "Nothing", and took the dog away.

8. Nevertheless, I was not allowed to enter my car and leave. Instead, another Unknown Indianapolis Police Department officer entered my car and opened and search a zipped up CD case which was on the floor board of my rear seats. He also opened up a box of cassette cases which was located in the rear of his car as well. Upon finding nothing the officer proceeded to look under the seats of his car. He found a flashlight that I own, unscrewed it and dumped out the batteries. Another Unknown Indianapolis Police Department officer returned and handed me my license and registration and told me that I was clean and could be let go.

9. An Unknown Indianapolis Police Department officer then returned me my gun. He did, however, retain, the bullet that was in the gun when it was seized.

10. At no time had I committed any criminal activity. Nor was their at any time any reasonable suspicion, much less probable cause, for the inside of my car to be searched or for the officers to demand to know why I was in the neighborhood or similar information.

11. My detention at the roadblock took approximately 15-20 minutes.

12. I regularly travel the interstate highways and the streets of Indianapolis.

13. I am extremely concerned that I may be stopped again in a roadblock since I believe that the roadblocks violate my constitutional rights.

VERIFICATION

I hereby verify under penalty of perjury that the foregoing is true and correct.

Executed on 10-12-98.

Prepared by: /s/ James E. Edmond

Kenneth J. Falk
Indiana Civil Liberties Union
1031 E. Washington St.
Indianapolis, IN 46202

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

AFFIDAVIT OF JOELL PALMER

Comes now Joell Palmer, being duly sworn upon his oath, and says that:

1. On approximately September 28 or 29, 1998, I was traveling on Interstate 65 in Indianapolis and exited on the ramp leading to Prospect and East streets.

2. There were approximately 35 Indianapolis Police Department Officers on the ramp and I was pulled over by an Unknown Indianapolis Police Department Officer.

3. An Unknown Indianapolis Police Department officer approached my car and said that the police were going to search his car. I was told to exit my car.

4. Although an Unknown Indianapolis Police Department Officer took my registration and license, the police informed me that my car was going to be searched even before my license and registration was taken.

5. I informed the Unknown Members of the Indianapolis Police Department that I was not waiving my 4th Amendment rights.

6. I was told to put my hands on the back of my car and an Unknown Member of the Indianapolis Police Department started to pat me down and put his hand in the left front pocket of my pants. There was nothing there but keys and the officer did not remove anything from my person. I again stated that I had not waived my rights and the police officer informed me that I had no rights.

7. At that point the police officers brought a dog to my car and opened my car up and let the dog put its front paws in the back of the car and the dog stuck its head into the front of my car, even though at no point while the dog was outside of the car did the dog give any indication that drugs had been detected.

8. An Unknown Member of the Indianapolis Police Department then reached into my car and removed campaign literature which I had on my back seat. The officer went through the literature.

9. I then had my license and registration returned to me by an officer and I was allowed to leave.

10. I was detained for 5 to 10 minutes.

11. At no time had I committed any criminal activity. Nor was their at any time any reasonable suspicion, much less probable cause, for the inside of my car to be searched or for the police to perform a pat down search of my person.

12. I regularly travel the interstate highways and the streets of Indianapolis. I remain quite concerned that I will be pulled over again and subjected to another unlawful search at a roadblock.

VERIFICATION

I hereby verify under penalty of perjury that the foregoing is true and correct.

Executed on 10/12/98.

Prepared by: /s/ illegible

Kenneth J. Falk
Indiana Civil Liberties Union
1031 E. Washington St.
Indianapolis, IN 46202